

# **\*USAREUR Regulation 27-9**

## **Legal Services**

### **Misconduct by Civilians**

**21 May 2002**

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**\*This regulation supersedes USAREUR Regulation 27-9, 18 September 2001.**

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For the Commander:

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**Summary.** This regulation establishes policy and procedures for taking appropriate administrative action for misconduct by civilians who receive USAREUR individual logistic support.

**Summary of Change.** This revision--

- Deletes the requirement for civilian misconduct action authorities (CMAAs) to consolidate their CMAA checklists (AE Form 27-9A-R) at the end of each calendar year and send them through the area support group commander to the Office of the Deputy Chief of Staff, Resource Management, HQ USAREUR/7A, by the 10th of the following calendar year.
- Clarifies the offender's option to respond orally to adverse administrative action (para 10c(4)).
- Authorizes a community bar authority to issue a local bar of that community's facilities, regardless of where the offender is stationed, resides, or receives logistic support (para 10e).
- Adds the policy and procedures of an interservice memorandum of agreement that provides for a theaterwide bar from all installations and facilities of the U.S. Armed Forces in Europe (para 12e(3) and app D).
- Establishes delayed bar actions for contractor employees (para 12e(8)).

**Applicability--**

a. This regulation applies to:

- (1) Persons who are not on active military duty but who receive individual logistic support from the U.S. Forces.

(2) Civilian personnel who are permitted to use U.S. Forces facilities, regardless of command sponsorship status. Persons subject to this regulation (affiliated personnel) include, but are not limited to the following:

(a) Appropriated and nonappropriated-fund DOD civilian employees, their family members, and members of their households (glossary).

(b) Family members of U.S. military members.

(c) Members of households of U.S. military personnel.

(d) U.S. military retirees and their family members.

(e) Employees of Government contractors and their family members.

(f) Government consular and diplomatic personnel and their family members.

(3) Military, civilian, and other persons who sponsor family members for logistic support when the family member is involved in misconduct offenses.

b. Other regulations and international agreements may establish policy and procedures for responding to incidents of misconduct by--

(1) Allied forces soldiers and civilians.

(2) Non-Government consular and diplomatic personnel and their family members eligible to receive individual logistic support from USAREUR.

**Supplementation.** Commanders will not supplement this regulation without CG, USAREUR/7A (AEAJA-MC), approval.

**Forms.** This regulation prescribes AE Form 27-9A-R (CMAA Checklist) (requirement control symbol: AEAJA-27-9A). USAREUR and higher-level forms (printed and electronic) are available through the USAREUR Publications System (UPUBS).

**Suggested Improvements.** The proponent of this regulation is the Office of the Judge Advocate, HQ USAREUR/7A (AEAJA-MC, 370-8775). Users may suggest improvements to this regulation by sending DA Form 2028 (Recommended Changes to Publications and Blank Forms) to the Commander, USAREUR/7A, ATTN: AEAJA-MC, Unit 29351, APO AE 09014.

**Distribution.** B (UPUBS). This regulation is available only in electronic format.

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## **SECTION I**

### **GENERAL**

#### **1. PURPOSE**

This regulation--

- a. Establishes policy and procedures for responding to misconduct by persons (excluding active duty military personnel) eligible to receive individual logistic support from U.S. Forces and by persons seeking access to U.S. military installations.
- b. Provides guidance on administrative procedures and actions to take in response to civilian misconduct.
- c. Establishes administrative actions necessary to safeguard the resources, facilities, and welfare of USAREUR communities.
- d. Does not prescribe criminal justice procedures. Host nations have criminal jurisdiction over civilians during peacetime.

#### **2. REFERENCES**

Appendix A lists references.

#### **3. EXPLANATION OF ABBREVIATIONS AND TERMS**

The glossary defines abbreviations and terms.

#### **4. RESPONSIBILITIES**

a. Base support battalion (BSB) commanders are responsible for the morale, welfare, safety, and good order in their geographic areas of responsibility. To carry out this responsibility, BSB commanders will serve as the civilian misconduct action authority (CMAA) for their geographic areas of responsibility. In exercising this authority, CMAAs will--

(1) Not delegate their CMAA authority.

(2) Investigate and respond to incidents of civilian misconduct that occur within their primary jurisdiction (para 10e).

(3) Appoint an assistant civilian misconduct action authority (ACMAA). The ACMAA will be an administrative assistant to the CMAA and be responsible for receiving reports, maintaining records, and monitoring the status of civilian misconduct incidents. The CMAA may direct the ACMAA to conduct necessary interviews and collect evidence on civilian misconduct incidents.

**NOTE:** Judge advocates (JAs) and military police who perform law-enforcement duties in the area support group (ASG) and counselors (for example, Army Community Service (ACS) personnel, inspector general (IG), assistant IG) will not be assigned as ACMAAs.

(4) Ensure ACMAAs prepare and maintain an AE Form 27-9A-R (CMAA Checklist) (requirement control symbol: AEAJA-27-9A) for each case.

b. ASG commanders who do not have subordinate BSBs will carry out the responsibilities in a above. ASG commanders who cannot perform the duties of a CMAA will request that a CMAA be designated. The request must be in writing, include a justification, and be sent to the Office of the Judge Advocate (OJA), HQ USAREUR/7A (Commander, USAREUR/7A, ATTN: AEAJA-MC, Unit 29351, APO AE 09014).

c. On receipt of requests in b above, the OJA will designate a CMAA and request the Chief of Staff (CofS), HQ USAREUR/7A, approval of the recommended designee. On receipt of CofS approval, the OJA will inform the ASG commander of who has been designated CMAA.

d. Sponsors and parents will make every effort to prevent misconduct by their family members. Sponsors will--

(1) Cooperate fully with ASG, BSB, school, and host-nation officials.

(2) Encourage family members who commit misconduct to demonstrate their desire to remain in the ASG and retain individual logistic support. Family members can demonstrate this in various ways, to include offering restitution or by taking part in the community-supervision program.

(3) Use recommended services (for example, family counseling, consultation with school officials, parent effectiveness training) to encourage family members to act responsibly.

e. Department of Defense Dependents Schools (DODDS) officials will take appropriate administrative action regarding student, teacher, and staff disciplinary problems that occur at schools, during school activities, or while using DODDS-run schoolbuses. DODDS officials will notify the CMAA of suspensions and expulsions from school and report criminal offenses to the CMAA and local provost marshal (PM). DODDS officials will cooperate with ASG commanders to inspect for and remove contraband or when evidence of misconduct occurs on school premises or in DODDS facilities.

f. Officials of universities or colleges operating in USAREUR will take administrative action regarding violations of school rules and regulations. Whenever a student is suspended, expelled, or has been involved in criminal conduct, university or college officials will notify the CMAA of the student's sponsor and the CMAA in the area the school is located. Criminal conduct should be reported to the PM responsible for the area of the college or university.

g. Law-enforcement officials will ensure--

(1) Investigations of offenses committed by civilians are thorough.

(2) Evidence is retained until any appeal on the case (including an appeal from administrative action) has been completed.

h. Only the local legal liaison authority (LLA) (normally the servicing JA) may communicate with German judicial authorities (prosecutors and court officials) and prison officials (app B). The ASG commander and anyone who is contacted by German judicial authorities or prison officials about prosecution, or possible prosecution, of U.S. personnel will notify and refer any communication by German authorities to the local LLA.

i. Legal advisors (LAs) serve the same function as LLAs in host nations other than Germany. LAs are under the supervision of the local U.S. country representative (UR 550-50).

j. Commanders at all levels will support CMAA actions. Regulations that prescribe the commander's authority to take certain administrative actions must be followed. If the sponsor's commander refuses to impose a sanction requested by the CMAA, the CMAA will refer the matter through the sponsor's chain of command to the first general officer.

k. All personnel will--

(1) Avoid misconduct.

(2) Promote good conduct.

(3) Cooperate fully with ASG, BSB, school, and host-nation authorities.

(4) Present proper identification when requested by military or civilian police, commissioned officer's, or noncommissioned officers in the rank of sergeant first class or higher, who are enforcing order, discipline, or security affecting U.S. Forces, civilian components, or family members.

l. Staff judge advocates (SJAs) and command JAs will--

(1) Provide technical assistance to help CMAAs develop administrative procedures for operating a civilian misconduct action program.

(2) With CMAAs and ACMAAs, review the efficiency and effectiveness of program administrative procedures. These informal reviews will be conducted with CMAAs and ACMAAs using the annually submitted AE Forms 27-9A-R (a(5) above). Results of the review will provide the basis for program modifications. If the review results in significant observations or recommendations, the SJA will send them to the Commander, USAREUR/7A, ATTN: AEAJA-MC, Unit 29351, APO AE 09014, for evaluation and USAREUR distribution.

(3) Provide training for CMAAs and ACMAAs. Training will be structured to meet the specific needs of individual CMAAs and ACMAAs.

## 5. POLICY

a. The CG, USAREUR/7A, authorizes individual logistic support to civilians who accompany the U.S. Forces, on the condition of good behavior. The CG, USAREUR/7A, has the authority to revoke or permanently suspend individual logistic support (UR 600-700) and bar personnel from entry to installations, housing areas, lands, buildings, or other structures or places under USAREUR control or jurisdiction.

(1) The authority of the CG, USAREUR/7A, to revoke or permanently suspend individual logistic support for authorized individuals is delegated to CMAAs according to this regulation.

(2) The authority of the CG, USAREUR/7A, to bar personnel from entry has been delegated, or is vested as follows:

**(a) USAREUR Bar.** Commanders with general-court martial convening authority (GCMCA), ASG commanders, and the CofS, HQ USAREUR/7A, acting for the CG, may issue orders barring entry (UR 27-10, para 21).

**(b) Local Bar.** Commanders with GCMCA, ASG commanders, and BSB commanders may bar personnel from entering areas under their local control (UR 27-10, para 21b).

**NOTE:** The authority to bar from entry, either USAREUR or locally, is the responsibility of the commanders specified above, who also may be CMAAs. CMAAs who are not bar authorities may recommend bars to the appropriate bar authority. Appellate recourse for bars from entry is prescribed in UR 27-10, paragraph 21d, and this regulation, paragraph 10.

b. CMAA programs will be more effective when procedures and sanctions are applied consistently.

(1) Appendix C provides guidance to help CMAAs and ACMAAs select and effectively use administrative procedures for their programs.

(2) Incidents of misconduct will be solved as quickly and informally as possible. Commanders, staffs, and investigating officers (IOs) will process actions quickly, thoroughly, and fairly. The investigative procedures in this regulation will help the CMAA establish facts and determine appropriate administrative actions (para 12). Only the CMAA will determine procedures to be used and actions to be taken.

c. In peacetime, host-nation authorities have exclusive criminal jurisdiction over U.S. civilians in the host country. The CMAA may request local host-nation authorities to waive criminal jurisdiction over individuals when the CMAA believes suitable corrective administrative action is available. CMAAs will make requests through the local LLA in Germany (USAREUR Reg 550-56) or through the U.S. country representative in other host nations (UR 550-50).

d. When the CMAA believes criminal prosecution is appropriate, the CMAA should request that host-nation authorities exercise criminal jurisdiction. The CMAA will make requests through the local LLA in Germany or through the U.S. country representatives in other host nations (UR 550-50). Under German law, some acts will not be prosecuted unless the victim initiates a criminal complaint. For cases in which the Government is the victim and military authorities determine that a criminal complaint should be filed, the CMAA must consult with the servicing LLA. The LLA will be the liaison between the complainant (the U.S. Government) and German prosecutorial officials (app B).

e. Prosecution by host-nation authorities does not prevent, and should not delay, the CMAA from taking appropriate administrative action. However, when a violation of host-nation law is involved, no civilian may be given early return to the United States before host-nation authorities give permission through the local LLA or country representative.

## **SECTION II**

### **ADMINISTRATIVE AND INVESTIGATIVE PROCEDURES**

#### **6. REPORTING MISCONDUCT**

Local law-enforcement officials, school officials, facilities managers, commanders, supervisors of civilian personnel, and anyone else who has information about misconduct by U.S. civilians will report the misconduct to the ACMAA. Military justice officials or administrative separation authorities will, in appropriate cases, notify the appropriate ACMAA of actions taken against military personnel.

a. The ACMAA immediately will--

(1) Report matters of misconduct to the CMAA.

(2) In Germany, notify the local LLA of the following:

(a) Host-nation authority apprehension, arrest, or confinement of a civilian sponsor or family member.

(b) Host-nation criminal charges filed against a civilian sponsor or family member.

(c) The pending host-nation trial of a civilian sponsor or family member.

(d) U.S. civilian employee or family member misconduct, when a local national or third-country national is a victim.

(e) Felonies (for example, murder, manslaughter, rape, robbery, aggravated assault, distribution of drugs, possession of drugs with intent to distribute unlawfully) or attempts to commit a felony, regardless of the nationality of the victim.

(f) Incidents involving other U.S. citizens (for example, tourists) so that appropriate host-nation authorities may be notified.

(3) Outside Germany, report incidents through the LA to the U.S. country representative.

b. In Germany, the JA who provides service to a military community is the community LLA. The LLA is the only legal point of contact for German judicial and prison officials.

(1) The LLA will send reports received from German authorities about misconduct by civilian personnel entitled to individual logistic support to the ACMAA.

(2) The LLA will report the following incidents of civilian misconduct to the appropriate German authorities:

(a) Misconduct when a local or third-country national is a victim.

(b) Felonies, regardless of the nationality of the victim.

(c) Lesser incidents of misconduct that the LLA believes may endanger German-American relations.

(3) When German authorities consider judicial or administrative action against U.S. civilians, the LLA will coordinate with German authorities on behalf of the ASG commander.

c. Outside Germany, the LA (normally the servicing JA) to the U.S. country representative takes the place of the local LLA. The LA will perform the functions of the local LLA according to procedures specified by the U.S. country representative.

## **7. AFTER REPORTS OF MISCONDUCT**

a. The CMAA may immediately suspend logistic support privileges to prevent further misconduct (UR 600-700). The CMAA will follow the procedures in paragraph 10 to permanently revoke privileges.

b. The CMAA will coordinate with the local LLA to determine appropriateness of prosecution or processing by host-nation authorities.

c. After reviewing the available facts on a reported incident, the CMAA may--

(1) Notify the offender (sponsor or parents, if the offender is a family member) of the intended administrative actions. This procedure is appropriate when pertinent facts are established and undisputed and the actions are apparent.

(2) Conduct a preliminary inquiry (para 8). This action is appropriate when the circumstances of the incident are unclear or the administrative action is not apparent.

(3) Appoint an IO (para 9b). This action may be appropriate because of the seriousness of the offense, the complexity of the case, the need for recommendations for appropriate sanctions, or other unique circumstances.

(4) Take no action when information indicates that no misconduct occurred or that administrative action is not warranted.

## **8. PRELIMINARY INQUIRY**

a. The CMAA may collect, or direct the ACMAA to collect, more information (for example, collect documentary evidence; interview witnesses, sponsors, or persons reported to have committed misconduct) about the reported misconduct when the initial report does not clearly establish the facts.

b. The CMAA or ACMAA may consult interested parties (for example, supervisors, sponsors, school officials, medical and mental health personnel, persons in the sponsor's chain of command) about the appropriateness of contemplated administrative actions.

c. With information developed from the preliminary inquiry, the CMAA may do one or more of the following:

(1) Appoint an IO.

(2) Notify the offender (sponsor or parents) of intended administrative actions if the information establishes pertinent facts and appropriate actions are apparent.

(3) Take no action when the preliminary inquiry establishes that no misconduct occurred or that no administrative sanctions are warranted.

## **9. INVESTIGATIONS**

**a. General.** Investigations referred to in this regulation are not formal investigations under AR 15-6. However, informal investigation procedures in AR 15-6 may be used. A board of officers for an informal investigation is allowed but discouraged.

### **b. Appointing IOs.**

(1) The CMAA may appoint an IO to investigate reported incidents of misconduct and recommend dispositions.

(2) IOs may be appointed orally or in writing. If civilians and CMAAs residing in more than one ASG or BSB are involved, the CMAA with primary jurisdiction should appoint a single IO.

(3) The IO appointment should be done on a recurring basis to develop expertise whenever possible.

(4) Only commissioned and warrant officers and civilians in grades GS-9 and higher will be appointed as IOs. The IO will be senior in grade to the offender. If the offender is a family member, the IO should be senior in grade to the offender's sponsor (unless the CMAA determines this requirement is impractical).

(5) The ACMAA and officers or civilians from organizations or staff sections whose primary duty is counseling (for example, ACS personnel, Alcohol and Drug Abuse Prevention and Control Program personnel, chaplains, mental health personnel) should not be appointed as IOs. JAs and military police performing law-enforcement duties within the ASG or BSB, IGs, and AIGs will not be appointed as IOs.

**c. Administrative Support.** The CMAA will provide the IO with necessary facilities, clerical assistance, and other administrative support. Support must allow rapid processing of investigations.

### **d. Procedures.**

**(1) Conducting Investigations.** The IO may collect information through personal interviews, correspondence, telephone inquiries, or other appropriate means. (IOs should consult with the SJA for the definition of "appropriate.") Information obtained will be documented in memorandums for record, witness statements, or other written documents. The IO may personally interview witnesses at their job sites or at home, or request that witnesses come to a central location where official witness statements may be taken.

### **(2) Findings and Recommendations.**

(a) The IO will present written findings and recommendations to the CMAA.

(b) When a family member is involved, the sponsor may recommend actions.

(c) The IO should obtain approval from the offender (or the consent of a parent if the offender is a minor child) before making recommendations for actions requiring approval or consent (for example, enrollment in a community supervision program or an Alcohol and Drug Abuse Prevention and Control Program). Parental consent should be included in the IO report. If the offender or parent declines an IO recommendation requiring consent, the IO will note this in the report.

(d) The CMAA is not bound by IO findings and recommendations. The CMAA may also consider relevant information not presented by the IO.

## 10. ADMINISTRATIVE PROCEDURES

### a. Action by the CMAA.

(1) Based on the reported facts of the incident, a preliminary inquiry, or an IO report, the CMAA may--

- (a) Decide to take no action.
- (b) Determine that minor administrative action is appropriate.
- (c) Determine that adverse administrative action is appropriate.

(2) The CMAA is not required to comply with the due-process provisions in this paragraph when the adverse action is being taken against nonaffiliated personnel who seek access to U.S. military installations. (Affiliated personnel are defined in the applicability statement at the beginning of this regulation.)

**b. Minor Administrative Action.** Minor administrative actions are oral counseling (para 12a) and letters of warnings (para 12b).

- (1) No notice is necessary before a minor administrative action is taken.
- (2) Oral counseling and letters of warning are not considered adverse administrative actions.

(3) The offender (sponsor or parents) does not have the right to examine the case file in such cases. On request of the offender (sponsor or parents), the CMAA may permit examination of the file. The CMAA may, however, withhold portions of the file for good cause.

(a) Examples of documents withheld for good cause include classified documents, investigative files that would endanger the life or physical safety of law-enforcement personnel, and certain medical files.

(b) Documents withheld for good cause are generally exempt from mandatory release under the Freedom of Information Act (AR 25-55).

**c. Notification of Intended Adverse Administrative Action.** The CMAA will notify the offender (sponsor or parents) orally or in writing (documented on a memorandum for record) of the following:

- (1) The intended administrative action or actions.
- (2) A summary of the facts on which actions are based.
- (3) The opportunity to examine the file (except portions withheld for good cause under b above).

(4) The opportunity for the offender to respond orally (not necessarily in-person; for example, by telephone, through video teleconference) or in writing to the CMAA within 3 workdays.

**d. Notification of Adverse Administration Action Taken.** After considering responses to notifications of intended adverse administrative action (c(4) above), the CMAA will notify the offender (sponsor or parents) in writing of each action taken and of the opportunity to submit a written appeal within 7 calendar days (g below). The CMAA will inform offenders appealing actions imposed after CMAA recommendation, by authorities other than the CMAA, to submit their appeals according to the regulations governing those actions (for example, UR 190-1 for revocation of U.S. Forces certificate of license, UR 600-702 for revocation of Class Six privileges for civilians, UR 27-10 for bars from entry for civilians). The effective date of an administrative action is the date the offender receives notification that the action has been taken. The CMAA will provide copies of the notification to the following, as applicable:

(1) The offender's commander or supervisor. In addition to considering appropriate disciplinary action against an employee, the commander or supervisor will evaluate whether a security clearance is required or possessed by the offender and will immediately report the adverse administrative action to appropriate security-clearance-review authorities.

(2) The offender's sponsor or parents if the offender is a family member.

(3) The sponsor's commander or supervisor if the offender is a family member.

(4) The GCMCA or ASG commander issuing a USAREUR bar memorandum will send a copy to the Commander, 1st Personnel Command (1st PERSCOM), ATTN: AEUPE-PSSD-PSD, Unit 29058, APO AE 09081, within 15 days after the end of each calendar quarter (UR 27-10, para 21c).

**e. Referral to Another CMAA or Commander for Action.**

(1) The CMAA of the ASG or BSB where the civilian receives logistic support has primary jurisdiction in civilian misconduct cases. When misconduct occurs within the jurisdiction of a CMAA who does not have primary jurisdiction, the CMAA will refer the matter to the CMAA who has primary jurisdiction. The CMAA with primary jurisdiction will inform the referring CMAA of actions taken. The CMAA with primary jurisdiction may waive jurisdiction on request by a CMAA who does not have primary jurisdiction but in whose area the misconduct occurred.

(2) When regulations grant authority for administrative actions to someone other than the CMAA (for example, UR 190-1 for revocation of U.S. Forces certificate of license, UR 600-702 for revocation of Class Six privileges for civilians, UR 27-10 for bars from entry for civilians), the CMAA will notify that authority and recommend actions. If that authority decides the actions recommended by the CMAA are inappropriate, the CMAA will refer the matter through the chain of command to the first general officer commander over the authority. The general officer's decision will be final.

**NOTE:** Each military community controls access to its facilities. When misconduct is committed within a community, that community's bar authority has the option of issuing a local bar to the community's facilities, regardless of where the offender is assigned, resides (family member or nonaffiliated person), or receives logistic support (para 12e).

**f. Suspension of Administrative Action.** The CMAA may suspend one or more administrative actions on the condition of good behavior by the offender. The CMAA also may suspend administrative actions pending successful completion of a community supervision program. Suspensions of administrative actions ordinarily should not exceed 1 year.

**g. Appeal of CMAA Adverse Administrative Action.** Offenders (sponsors or parents) have 7 calendar days to appeal an adverse administrative action. Offenders will send appeals through the CMAA to the appellate authority for action.

(1) The ASG commander is normally the appellate authority (subject to d above).

(2) The GCMCA or delegated GCMCA delegate for the area where the sponsor of the family member is permanently assigned (UR 27-10) will serve as the appellate authority for cases in which the ASG commander has performed the duties of the CMAA (for example, authorizing the early return of family members).

(3) The CMAA will add to the file any response appropriate to the matters raised on appeal.

(4) The CMAA may delay the effective date of administrative actions pending an appeal.

(5) Offenders will address appeals of administrative actions taken by authorities other than the CMAA (e(2) above) to the appellate authority specified in the controlling regulation.

(6) CMAAS who are ASG or BSB commanders have the authority to impose bars from entry according to UR 27-10, paragraph 21, and this regulation.

(7) Requests to remove or modify bars that are submitted at the same time as an appeal of other CMAA administrative actions will be processed according to UR 27-10 and the following:

(a) Requests to remove or modify a bar to entry must be sent to the authority who issued the bar memorandum.

(b) Requests to remove a bar to entry will explain why the bar should be lifted (for example, why the individual is not a threat to good order, discipline, or morale; combat readiness; mission accomplishment; installation security; or the privacy rights of those who work or live on U.S. military installations).

(c) Unless there are exceptional circumstances, commanders will not remove or modify bars to entry until at least 1 year after the effective date of the bar memorandum. Commanders will request legal review and advice of the servicing SJA before acting on requests to remove or modify bars to entry.

**h. Legal Review.** Legal review is not required before the CMAA notifies offenders of intended adverse administrative action. The CMAA should, however, seek legal advice in the following situations:

(1) When an offender appeals an adverse administrative action.

(2) In complex cases.

(3) When the offender (sponsor or parent) wants to examine the file and the CMAA wishes to withhold information for good cause.

(4) When required or advised by this regulation (paras 12e(3), 12e(6), 12h, and 14).

**i. Host-Nation Judicial or Administrative Proceedings.** A CMAA may take actions against an offender even when host-nation judicial or administrative authorities are taking action against the offender. Appendix B describes procedures for seeking criminal prosecution in host nations.

**j. Records of Misconduct Actions.** The CMAA will maintain records of actions taken for acts of misconduct. The records will be maintained for 3 years from the date the CMAA notifies the offender of actions taken or the date of action on an appeal, whichever is later.

## **11. GENERAL GUIDANCE IN SELECTING ADMINISTRATIVE ACTIONS**

The CMAA will consider the following factors when selecting appropriate actions for civilian misconduct:

a. Seriousness of the misconduct.

b. Relationship of the sanction to the offense. The administrative action imposed should bear a rational relationship to the offense committed (for example, suspension of driving privileges for misconduct involving an automobile, but not for shoplifting at an AAFES exchange).

c. Offender's prior record. The CMAA should take stronger action against persons who have previously been involved in misconduct.

d. Age and maturity of the offender. The CMAA should handle vandalism committed by a 10-year-old child differently than vandalism committed by a teenager or an adult.

e. Compensation to victims. The CMAA will consider actions the offender has taken to rectify the effects of his or her misconduct. The CMAA cannot force offenders (or their military or civilian sponsors) to compensate victims for loss or damage. However, restitution by offenders for damaged property (including Government property) is one indication of a willingness to live responsibly in the community in the future. Compensation to victims need not be monetary. In determining appropriate sanctions, the CMAA may consider any type of compensation acceptable to the victim (for example, errand-running, lawn-mowing).

f. Guidelines for CMAAs and ACMAAs. Appendix C lists factors to consider when determining which administrative actions are appropriate.

## **SECTION III**

### **ADMINISTRATIVE ACTIONS AVAILABLE TO THE CMAA**

## **12. ADMINISTRATIVE ACTIONS THAT MAY BE TAKEN**

The CMAA may take any of the following administrative actions in response to misconduct by anyone subject to this regulation. Other actions may be taken by the CMAA, as appropriate.

**a. Counseling.** The CMAA may counsel an offender about the misconduct. If the offender is a family member or member of a household, the parents or sponsor will be notified of the pending counseling and will be given a reasonable opportunity to be present.

**b. Letter of Warning.** The CMAA may issue a letter of warning to the offender. The offender (sponsor or parents) may respond in writing within 3 workdays. If the offender is--

(1) A family member or a member of a household, the letter should be sent through the sponsor's commander or supervisor. A copy of the letter will be provided to the sponsor.

(2) An adult civilian employee, the letter should be sent through his or her supervisor. This channel of notification applies to appropriated fund (APF) employees, nonappropriated fund (NAF) employees, and local national employees.

(3) An employee of a Government contractor, the letter should be sent through the contracting officer or contracting officer's representative (COR).

**c. Notification of U.S. Hiring Authorities.** The CMAA should notify appropriate hiring authorities (for example, civilian personnel advisory center (CPAC) personnel, Government contractors) of misconduct that could affect a future applicant's employment qualifications. If the offender is already employed, the CMAA will also advise the servicing CPAC, the employee's supervisor, contracting officer, or COR, as appropriate.

**d. Suspension or Revocation of Logistic Support Privileges.** The CMAA may take action to suspend or terminate an offender's logistic support privileges in USAREUR. In appropriate instances, the CMAA will forward requests that impose certain actions to the responsible authority. Privileges the CMAA may take action to suspend or terminate include, but are not limited to, the following:

**(1) Army and Air Force Exchange Service (AAFES) Operating Facilities.** AAFES-facility privileges may be suspended for appropriate periods when facility privileges are abused (AR 60-20). AAFES-facility privileges will be suspended for 6 months for shoplifting or for knowingly presenting a bad check.

**(2) Commissary.** Commissary privileges may be suspended for an appropriate period of time if those privileges are abused.

**(3) Morale, Welfare, and Recreation (MWR) Activities.** Offenders may be denied the privilege of participating in an MWR activity if the absence of the offender is in the best interest of the activity, the community, or the U.S. Army (AR 215-1). The misconduct need not involve abuse of MWR activities.

**(4) U.S. Army Club Privileges.** U.S. Army clubs are MWR activities. Club privileges may be denied if denying access to the club is in the best interest of the activity, the community, or the U.S. Army (AR 215-1). The misconduct need not involve or occur in a club.

**(5) Check Cashing.** Check-cashing privileges may be suspended if they are abused (AR 210-60). Specific check-cashing policy is in the appropriate regulations for the various community activities (for example, AR 60-20 for AAFES).

**(6) Government Housing Facility.** Assignment to a Government housing that facility may be terminated if a sponsor or family member is involved in illegal use of the housing facility or in misconduct that is contrary to the safety, health, or morale on the installation (AR 210-50). The misconduct need not occur in or involve abuse of the housing facility.

**(7) Ration Privileges.** Ration privileges may be suspended if abused (UR 600-702).

**(8) Class Six Privileges.** Class Six privileges may be suspended if abused (UR 600-702).

**(9) USAREUR Driving Privileges.** USAREUR driving privileges may be suspended or revoked according to UR 190-1. Disposition of USAREUR certificates of license and license plates will be accomplished according to UR 190-1, paragraph 2-17. Persons placed on a USAREUR bar lose their eligibility for a USAREUR POV registration at 0001 hours the day after the bar is issued. Offenders are also ineligible for a registration translation to acquire registration with German authorities.

**c. Bar From Entry.**

(1) ASG and BSB commanders may bar offenders from areas and facilities under their responsibility and control. The ASG commander may delegate the authority to bar offenders from a particular ASG to the BSB commander.

(2) Authority to bar offenders in USAREUR from all areas and facilities under CG, USAREUR/7A, responsibility and control is delegated to GCMCAs and ASG commanders. This authority may not be delegated further. The CMAA will send requests to have an offender barred from all USAREUR areas and facilities to the ASG commander or to the GCMCA.

(3) The CG, USAREUR/7A; Commanding General, United States Air Forces in Europe; Commander in Chief, United States Naval Forces, Europe; and Commander, United States Marine Corps Forces Europe, signed a memorandum of agreement (MOA) (app D) for interservice acknowledgement, enforcement, and issue authority of theaterwide bars from entry to U.S. Armed Forces installations and facilities (app D, fig D-1). For example, when a theaterwide bar-authority for USAREUR (such as an ASG commander) issues a bar under the interservice MOA, the offender is barred from all installations under the operational control of U.S. Armed Forces in Europe.

(a) The MOA will not affect local and theaterwide bars issued by one service of the U.S. Armed Forces in Europe that are limited to that service's respective facilities.

(b) Theaterwide bars imposed under the MOA--

1. Should include the following statement: "Pursuant to the interservice memorandum of agreement for Installation Bars, effective 26 April 2002, this action will bar your entry to all facilities under the operational control of the U.S. Armed Forces in Europe."

2. Will be sent to 1st PERSCOM (AEUPE-PSSD-PSD) (para 10d(4)) for processing, maintenance, and distribution.

3. Theaterwide bar due-process rights are limited to those of the imposing service of the U.S. Armed Forces in Europe. Similarly, appellate procedures follow channels and regulations only of the service that issued the bar.

(c) Theaterwide bar POCs designated by each of the U.S. Armed Forces in Europe will notify 1st PERSCOM (AEUPE-PSSD-PSD) when a theaterwide bar is lifted or modified. The 1st PERSCOM will remove the subject individual from the consolidated bar list and notify the POCs of the other services when this occurs. The POCs will review cases involving lifted bars for possible reissue at their theaterwide or local installations, again following due-process requirements.

**NOTE:** After due-process requirements, a branch of the U.S. Armed Forces may request that 1st PERSCOM reissue a bar for installations under that branch's control.

(4) Bars against civilian employees (APF, NAF, DODDS, and AAFES) must be coordinated with the servicing CPAC and legal office. A DODDS or AAFES employee bar must be coordinated with the employing activity.

**(a) NAF Employees.** When a NAF employee is separated under AR 215-3, paragraph 2-12h, the employee may be considered disqualified from employment when they are barred from the area of employment. Employees who are barred should be notified in their bar letters that they are ineligible for employment within the area that is covered by the bar for the duration of the bar. NAF employees erroneously hired after the issuance of a bar and before the successful appeal of a bar should be separated from employment for ineligibility. Bars that preclude the NAF employee's entry into places of employment must be based on circumstances that ordinarily would support separation under NAF regulations.

**(b) APF Employees.** Generally, Federal employees have statutory due-process rights that must be observed in employment adverse actions (Title 5, United States Code, and this reg, para 14a). Employment adverse actions include removal from Federal employment. A bar from a place of employment may result in a constructive, employment adverse action.

1. Employees who are barred must be notified of the following in their bar letters:

a. They must disclose their bar on applications for employment on USAREUR installations in the area covered by the bar for the duration of the bar.

b. They must notify appropriate security-clearance authorities immediately on receipt of the bar letter.

c. Failure to comply with a and b above constitutes misconduct under this regulation.

2. The inability to gain lawful access to a prospective place of employment may be considered as a factor in the selection process.

3. APF employees erroneously hired after a bar has been issued and before the bar is successfully appealed must be provided statutory due process based on their status. In such cases, the imposing authority may consider minimally amending the bar to allow the barred employee access to the place of employment in exchange for the employee's entry into a "Last Chance" or "Alternative to Traditional Discipline" agreement.

**(c) Contractor Employees.** Contractor employees are not Federal employees. The military command in which the contractors are employed has broad discretion to admit them or to exclude them, provided the exclusion is not arbitrary. Managers must ensure that the Government's refusal to allow contractor employees entry does not interfere with the contractor's performance, as required by the contract terms, and does not cause the Government to terminate the contract or incur liability in favor of the contractor.

(5) Commanders or their delegated officials will not bar offenders from access to medical treatment facilities.

(6) CMAAs must be aware that bars from entry may have incidental effects, to include--

(a) Denying access to AAFES facilities, commissaries, or other places (including attendance at DODDS schools) where privileges have not been abused.

(b) Losing eligibility for USAREUR POV registration (d(9) above).

(c) Making an employee ineligible for (for example, NAF) or hindered from (for example, APF) future DA employment in the geographic area covered by the bar (e(3) above).

(d) Revoking or making an employee ineligible for an interim security clearance or terminating a security clearance, as determined by local security-clearance authorities and the Central Clearance Facility.

(7) Bars from entry should be coordinated with the servicing JA.

(8) If an offender departs a command before initiation or conclusion of a bar action, the action may be held pending the return of the individual or may be processed by notifying and serving the offender at the last known address. Certified mail with return receipt, or its equivalent, will be used to accomplish and record proper delivery. If possible, CMAAs and ACMAAs should determine the departure status of the offender when they learn of the misconduct, obtain a forwarding address, and attempt to conclude necessary actions before the offender departs.

(9) Depending on the severity of the misconduct and other relevant factors, misconduct committed outside a bar authority's community may constitute a sufficient basis for other bar authorities to bar offenders from their communities, short of a theaterwide bar. Due process provisions of this regulation apply.

**f. Early Return of Family Members.** Under the provisions of AR 55-46, USAREUR Supplement 1 to AR 55-46, and the Joint Travel Regulation, volume II, CMAAs will consider early return of family members or other civilian offenders to the United States when other administrative measures are not expected to be effective.

(1) CMAAs will ask sponsors to request early return of the offender to the United States.

(2) If the sponsor does not request early return of the offender, the ASG commander or other commander in the rank of colonel (O6) and above who has been appointed according to this regulation (para 4b) may authorize early return without the sponsor's request.

(3) If early return of a family member or other civilian to the United States is anticipated and a violation of host-nation law is involved, the LLA will notify the appropriate host-nation judicial authorities (UR 550-50 or UR 550-56, as applicable). The offender will not be returned to the United States without host-nation approval.

(4) When early return is authorized and the offender refuses to depart, or departs and returns to USAREUR, the CMAA may initiate action to revoke individual logistic support (other than medical care) according to UR 600-700. Bars from entry to installations and facilities also will be considered. Termination of Government family housing may be appropriate in certain cases under the provisions of AR 210-50.

**g. Curtailment of Tour.** In appropriate cases, the CMAA may request a curtailment of an overseas tour of a military sponsor (AR 614-30). The request must be sent to the Commander, 1st Personnel Command, ATTN: AEUPE-PSSD-PSD, Unit 29058, APO AE 09081, for approval. Similar actions against civilian sponsors should be coordinated with the servicing CPAC and the SJA and processed according to parts 352 and 752, Title 5, Code of Federal Regulations.

**h. Removal From Host Country.** Only host-nation authorities may remove offenders involuntarily from a host country (NATO Status of Forces Agreement, Article 3; and Supplementary Agreement, Article 8). This action should be reserved for cases where other actions, including early return of family members and curtailment of tour, have been determined not to be effective or appropriate. The CMAA will send requests and a complete justification for the action through the ASG commander and the commander exercising GCMCA to the Commander, USAREUR/7A, ATTN: AEAJA-MC, Unit 29351, APO AE 09014. The JA servicing the GCMCA will review requests for removal before sending them to the CG, USAREUR/7A (AEAJA-MC).

### 13. COMMUNITY SUPERVISION PROGRAMS

a. Community supervision programs offer effective ways to determine whether or not an offender is willing to be a responsible community member. Community supervision programs should be tailored to the offense and to the offender. Examples include requiring the offender to--

(1) Periodically report personally to the community supervision officer or an appropriate designee.

(2) Receive periodic home visits from the community supervision officer or an appropriate designee.

(3) Remain at home during specified hours of the day.

(4) Perform voluntary services in the community. Those services may not involve services that are currently or normally covered by APF positions.

(5) Make payments to, or perform services for, victims affected by the misconduct to reimburse them for damage or loss.

b. The offender (sponsor or parents) must consent in writing to any community supervision program. When deciding other appropriate action to take against the offender, the CMAA should consider failure to consent to or unsatisfactory participation in a community supervision program.

c. The CMAA will designate a soldier or civilian (for example, local military police juvenile officer) to supervise persons participating in community supervision programs. The community supervision officer will make periodic reports (orally or in writing) to the CMAA about the offender's participation in the program.

### 14. OTHER ADMINISTRATIVE ACTIONS

Examples of actions that may be taken only in coordination with other activities include the following:

**a. Adverse Personnel Action Against Employees by U.S. Authorities.** Supervisors may take adverse personnel actions from reprimand through removal against APF and NAF employees when such action would promote the efficiency of the service (Code of Federal Regulations, , AR 215-3, and AR 690-700). Adverse personnel actions may be appropriate for off-duty conduct when the conduct relates to the employee's performance of official duties. Offenses affecting employment include conduct that shows a personal characteristic incompatible with the employee's position (for example, an act that puts an individual's credibility in question or impairs necessary public trust in the employee).

(1) Supervisors will consult with their local CPAC and SJA labor counselors for guidance.

(2) Supervisors of employees removed from Federal service for misconduct must report removals to their CMAA. The CMAA, with advice from the servicing SJA, will determine whether a bar from entry should be implemented.

**b. Suspension or Expulsion From DODDS.** DODDS principals may suspend students for serious or repeated acts of misconduct occurring at school or during school activities (DOD 1342.6-M). DODDS regional directors also are authorized to expel students. The CMAA should coordinate with DODDS officials when misconduct warrants DODDS suspension or expulsion.

**c. Installation Bars Involving DODDS Employees.** CMAAs may recommend bar to entry for DODDS employees from installations under the CMAA's control, even if DODDS facilities are on those installations. CMAAs who are ASG or BSB commanders may issue a bar according to UR 27-10. If the misconduct charge carries a sentence of 1 year or more under host-nation law, the DODDS employee will not be permitted on the installation without authorization from the commander imposing the bar. If the misconduct carries a sentence of less than 1 year under host-nation law, the DODDS employee may be permitted on the installation, but only to go directly to and from the worksite. Commanders imposing such a bar may deny this work-related access if they determine that the employee's access to the installation is not in the best interest of the community.

**d. Overstamping Identification Cards.** Identification cards will be overstamped according to AR 600-8-14.

## **APPENDIX A REFERENCES**

NATO Status of Forces Agreement

Supplementary Agreement to the NATO Status of Forces Agreement

Title 5, United States Code

Fourth Law to Amend the German Criminal Law of 11 June 1957

German Code of Criminal Procedure

Parts 352, 715, and 752, Title 5, Code of Federal Regulations

Joint Travel Regulation, volume II

DOD 1342.6-M, Administrative and Logistic Responsibilities for DOD Dependents Schools

AR 15-6, Procedures for Investigating Officers and Boards of Officers

AR 25-55, The Department of the Army Freedom of Information Act Program

AR 55-46 and USAREUR Supplement 1, Travel Overseas

AR 60-20, Army and Air Force Exchange Service Operating Policies

AR 210-50, Housing Management

AR 210-60, Personal Check Cashing Control and Abuse Prevention

AR 215-1, Morale, Welfare, and Recreation Activities and Nonappropriated Fund Instrumentalities

AR 215-3, Nonappropriated Funds and Related Activities Personnel Policies and Procedures

AR 600-8-14, Identification Cards for Members of the Uniformed Services, Their Family Members, and Other Eligible Personnel

AR 614-30, Overseas Service

AR 690-700, Personnel Relations and Services (General)

UR 10-5, HQ USAREUR/7A Responsibilities and Functions

UR 27-10, Military Justice

UR 190-1/USNAVEUR Instruction 11240.6K/USAFE Instruction 31-202, Registering and Operating Privately Owned Motor Vehicles in Germany

UR 550-50/USNAVEUR 5820.8H/USAFE Regulation 110-1, Exercise of Foreign Criminal Jurisdiction Over United States Personnel

UR 550-56/USNAVEUR Instruction 5820.13C/USAFE Instruction 51-705, Exercise of Jurisdiction by German Courts and Authorities Over U.S. Personnel

UR 600-700, Identification Cards and Individual Logistic Support

UR 600-702/USAFE Instruction 34-101, Ration Policy

## **APPENDIX B**

### **INITIATION OF CRIMINAL COMPLAINTS**

#### **B-1. PURPOSE**

This appendix provides guidance and procedures for U.S. military authorities to follow when criminal complaints are filed against civilians for offenses committed against the Government.

#### **B-2. INITIATION OF CRIMINAL COMPLAINTS IN GERMANY**

a. U.S. military authorities may file criminal complaints with local German police or with the appropriate local German prosecutor's office on behalf of the U.S. Army agency that is the victim of an offense. Criminal complaints may be filed against U.S. civilian, German, or third-country national personnel suspected of having committed the offense. Examples of offenses are--

(1) Criminal trespassing on a fenced installation made available to the U.S. Army for its exclusive use.

(2) Larceny or destruction of Government property.

(3) Fraud or embezzlement of Government property.

(4) Offenses listed under Article 7 of the Fourth Law to Amend the German Criminal Law of 11 June 1957, as amended, when an agency of the U.S. Forces is the victim.

b. The military authority determining that a complaint should be filed must consult the servicing staff judge advocate (SJA). The SJA will refer the matter to the appropriate legal liaison authority (LLA). The LLA will be the only point of contact between the military authority filing the complaint and German prosecutorial officials according to c through e below.

c. When the Government rather than a private individual is the victim of an offense, the agency that has control over or responsibility for the property should file the complaint. Authority, responsibility, and procedures for filing criminal complaints are as follows:

(1) When criminal trespassing has occurred in, on, or against a fenced U.S. Forces-controlled installation, the area support group (ASG) commander should file the complaint. If the ASG commander is a general officer, the deputy ASG commander should file the complaint.

(2) When larceny of Government-owned property (other than money) has occurred, the complaint should be filed by--

(a) The property book officer responsible for the property (appropriated fund (APF) property).

(b) The fund custodian (nonappropriated fund (NAF) property).

(3) When larceny or embezzlement of Government funds (APF or NAF) has occurred, the person responsible for the funds involved (for example, finance officer, commissary officer, fund custodian) should file the complaint.

(4) When the offenses are against the security of the U.S. Army (other than (1) above), the commander of the USAREUR or tenant command (UR 10-5, app A) who has jurisdiction over the area where the offense occurred should file the complaint. These requests for prosecution should be made by commanders, since these offenses are politically sensitive. The Federal prosecutor general (*Bundesanwalt*) or the State prosecutor general (*Generalstaatsanwalt*) at the applicable superior State court (*Oberlandesgericht*) normally prosecutes.

(5) LLAs should submit a complaint either by a notification of offense (*Strafanzeige*) or a request for prosecution (*Strafantrag*). No standard format exists for the notice or request. LLAs will submit enough factual information with the complaint to indicate that an offense has been committed. The LLA (except in (4) above) should submit the notice or request either to the local police having jurisdiction where the offense occurred or to the office of the public prosecutor (*Staatsanwaltschaft*) having jurisdiction.

(6) Most offenses will be prosecuted without a request for prosecution when there is a firm suspicion that an offense has occurred. Certain offenses (for example, trespassing, larceny of property with little value (less than 50 deutsche mark)) may be prosecuted only on request of the property holder. An exception is when the prosecutor determines prosecution is required in the public interest. When requests for prosecution are necessary, the victim must submit the request for prosecution (not the notification of offense) within 3 months after he or she suspects the offense occurred. When a request for prosecution is submitted, the complainant becomes entitled to certain rights. These include the right to--

- (a) Be notified if the charges are dismissed and to file objections to such a disposition.
- (b) Take part in the criminal proceedings as an intervenor (*Nebenkläger*).
- (c) Be advised of the results of the prosecution.
- (d) Appeal an unsatisfactory verdict (for example, acquittal, insufficient punishment).

d. When determining the propriety of filing a complaint, military authorities (c above) must consider the following possibilities:

(1) If the court determines that a false complaint was filed intentionally or frivolously (*leichtfertig*), the court must assess against the complainant the costs of the proceedings and the necessary expenditures (including attorneys fees) of the person against whom the complaint was filed (German Code of Criminal Procedure, section 469).

(2) If the complaint is withdrawn, the complainant may, under certain circumstances, be required to pay the costs and expenditures described in (1) above (German Code of Criminal Procedure, section 470). Because APFs may not be available to pay such costs and expenditures, the person who knowingly or frivolously files a false complaint or withdraws a complaint (even when the complaint is valid) may be personally liable for payment of the costs and expenditures.

e. For offenses in c(1) through (3) above, the appropriate LLA is designated in UR 550-56, appendix B. For offenses indicated in c(4) above, commanders should coordinate with the State (*Land*) LLA listed in UR 550-56, paragraph 6a.

### **B-3. INITIATION OF COMMAND COMPLAINTS IN COUNTRIES OTHER THAN GERMANY**

a. The propriety of initiating criminal complaints may be affected by political considerations and policy established by the designated commanding officer or U.S. country representative for the country concerned.

b. Criminal complaints will not be filed without coordination with and approval of the U.S. country representative for the country concerned (UR 550-50).

## **APPENDIX C**

### **GUIDELINES FOR CIVILIAN MISCONDUCT ACTION AUTHORITIES AND THEIR ASSISTANTS**

#### **C-1. PURPOSE**

This appendix provides guidance for the civilian misconduct action authority (CMAA) and the assistant civilian misconduct action authority (ACMAA) on selecting and effectively using administrative procedures to handle civilian misconduct cases. This appendix also provides guidance on using administrative sanctions available to the CMAA.

#### **C-2. ESTABLISHING CMAA PROGRAMS AND PROCEDURES**

a. The basic regulation provides CMAAs a great deal of flexibility in structuring their individual programs, subject to specified minimum due-process requirements. With the help of the servicing judge advocate (JA), CMAAs should evaluate their community needs and organize their individual programs accordingly.

b. Due-process requirements mandate certain procedural steps. CMAAs will do the following in every CMAA case:

(1) Notify and coordinate with the local legal liaison authority for those types of cases listed in the basic regulation, paragraph 6a(2).

(2) Review available facts.

(3) Take the following actions after determining that sanctions beyond minor administrative action (oral counseling or letters of warning (basic reg, para 10b)) are appropriate:

(a) Notify the offender (sponsor or parents) of intended administrative actions when the information establishes pertinent facts and sanctions are appropriate (basic reg, paras 7c(1), 8c(2), and 10c).

(b) Provide the offender an opportunity to examine the file (basic reg, para 10c(3)).

(c) Provide the offender an opportunity to respond orally or in writing within 3 workdays (basic reg, para 10c(4)).

(d) After considering responses to notifications, provide the offender with a written notice of decision, administrative sanctions (if any), and an opportunity to submit a written appeal within 7 calendar days (basic reg, para 10d).

(e) Send received appeals to the appellate authority (basic reg, para 10g).

c. Other actions may be adopted to help the CMAA in the fact-finding or adjudication process. Although not required, these measures may be particularly helpful in resolving civilian misconduct cases by adding clarity and consistency to the process. Additional procedures may include--

(1) Immediately suspending logistic support privileges to prevent further misconduct until the case is decided (basic reg, para 7a).

(2) Conducting a preliminary inquiry to collect more information (basic reg, paras 7c(2) and 8).

(3) Appointing an investigating officer (IO) (basic reg, paras 7c(3) and 9b).

(4) Conducting hearings. This may include personal appearances by the offender, witnesses, or interested parties.

(5) Delaying the effective date of sanctions pending an appeal (basic reg, para 10g).

(6) Providing the offender or sponsor an opportunity to appeal orally before sending written appeal to the appellate authority (basic reg, para 10g).

### **C-3. SELECTING THE BEST METHOD FOR DISPOSITION OF THE CASE**

a. No further inquiry is necessary when an offender admits misconduct or when pertinent facts are otherwise established. When the ACMAA is unsure about the sufficiency of the evidence, the ACMAA should refer the available evidence to the servicing legal officer for review.

b. In most cases, the military police or other agency report includes enough information to establish facts needed to determine whether minor administrative action or adverse administrative action should be taken. Notice and appeal rights do not apply when minor administrative actions are taken.

(1) Reports from initial military police investigations may provide enough information to determine whether the person committed the offense.

(2) CMAAs and ACMAAs should not conduct formal investigations. When more investigation is necessary, the CMAA should appoint an IO (para 9b). Appointing an IO should be a last resort.

c. Hearings or board proceedings are not required or recommended. Use of such procedures is within the discretion of the CMAA and should be used only in cases involving serious criminal misconduct and when the CMAA is considering severe adverse administrative action. Severe adverse administrative actions may include--

(1) Revoking logistic support privileges.

(2) Terminating access to Government housing facilities.

(3) Barring entry into a USAREUR area of responsibility (for example, area support group, base support battalion).

(4) Requiring early return of family members.

(5) Curtailing a tour.

d. When the person is not affiliated with the military or civilian workforce, the administrative due-process procedures in the basic regulation, paragraph 10, do not apply. For example, when the offender is not an employee of the U.S. Forces, a U.S. Forces family member, or a contractor employee, the CMAA may bar the person from the area (when the offense warrants such action) without advance notice and without allowing an opportunity to respond or appeal.

### **C-4. ADDITIONAL GUIDANCE FOR SELECTING APPROPRIATE ADMINISTRATIVE ACTIONS (SANCTIONS)**

a. The basic regulation, paragraph 11, describes the factors that the CMAA should consider when determining which administrative actions are appropriate in response to a civilian's misconduct.

b. Table C-1 provides suggested administrative actions to help CMAAs select an appropriate administrative action for particular acts of misconduct.

(1) Table C-1 does not include every act of misconduct. When an act of misconduct is committed that is not listed in table C-1, the CMAA may determine an appropriate administrative action by comparing the misconduct with other acts of misconduct listed.

(2) A particular adverse administrative action is not mandatory solely because of its being listed in table C-1. Selecting an appropriate administrative action requires balancing the relevant factors in each case. For example, even for acts of misconduct for which early return of family members or curtailment of tour is not listed for a first offense, early return or curtailment for a first offense may be appropriate for an aggravated offense or multiple offenses.

c. In determining the appropriate administrative action for a later act of misconduct, the CMAA should consider how much time has passed since the previous offense or offenses in relation to the most recent act of misconduct.

(1) Previous acts of misconduct may form the basis for proposing a more severe administrative action. Although counseling and letters of warning are not considered adverse administrative actions, they may be considered when determining an appropriate administrative action for a later act of misconduct.

(2) Aggravating factors that the CMAA intends to consider (for example, previous acts of misconduct or the severity of the current misconduct) should be included in the notice of the proposed administrative action provided to the offender. The offender should have an opportunity to respond to those factors.

d. The CMAA also should consider the offender's willingness to take part in a community service program voluntarily when determining the appropriate administrative action or penalty (basic reg, para 13). The CMAA may allow the offender to perform community service in place of imposing an administrative sanction or penalty.

<b>Table C-1</b>					
<b>Table of Suggested Penalties</b>					
<b>Offense</b>	<b>Nature of Offense</b>	<b>First Offense</b>	<b>Second Offense</b>	<b>Third Offense</b>	<b>Remarks</b>
1. Fighting or assault	Creating a disturbance	Counseling or letter of warning to suspension of privileges for up to 60 days	Letter of warning to suspension of privileges for up to 60 days	Suspension of privileges for 6 months to early return of family members or tour curtailment	More severe administrative action may be appropriate based on the seriousness of the disturbance.
	Threatening or attempting to inflict bodily harm without bodily contact	Letter of warning to suspension of privileges for up to 30 days	Suspension of privileges for up to 60 days to early return of family members or tour curtailment	Suspension or revocation of privileges to early return of family members or tour curtailment	
	Hitting, pushing, or other acts against another without causing injury	Letter of warning to suspension of privileges for up to 60 days	Suspension of privileges for up to 60 days to early return of family members or tour curtailment	Early return of family members to curtailment of tour	More severe administrative action may be taken based on such factors as provocation and status of victim.
	Hitting, pushing, or other acts against another causing injury	Letter of warning to early return of family members to tour curtailment	Early return of family members to tour curtailments		More severe administrative action may be taken based on such factors as provocation, extent of injuries, and status of victim.
2. Truancy	Unexcused absence from school by child	Counseling or letter of warning	Letter of warning to suspension of privileges for up to 30 days	Suspension of privileges for up to 60 days to early return of family members	
3. Insubordination	Refusal to obey orders, community or school rules, defiance of military police, German police, or commander's authority	Counseling or letter of warning to early return or family members	Suspension of privileges for up to 30 days to early return of family members	Early return of family members	Revocation of all logistic support privileges may be appropriate when family members refuse to leave.

**Table C-1****Table of Suggested Penalties**

<b>Offense</b>	<b>Nature of Offense</b>	<b>First Offense</b>	<b>Second Offense</b>	<b>Third Offense</b>	<b>Remarks</b>
4. Unauthorized use of alcohol or drugs	Unauthorized possession or transfer of alcoholic beverages or drugs while on Government property or in a Government housing area	Letter of warning to suspension of privileges for 30 days	Suspension of privileges for up to 6 months	Suspension of privileges for up to 1 year/revocation of privileges to early return of family members or tour curtailments	More severe administrative action may be appropriate when aggravating factors are present (for example, giving alcohol or drugs to a child under the age of 16).
	Unauthorized use of alcoholic beverages or drugs	Letter of warning to suspension of privileges for up to 60 days	Suspension of privileges for up to 6 months	Suspension of privileges for up to 1 year/revocation of privileges to early return of family members	
5. Drunk and disorderly conduct	Drunk and creating a disturbance on Government property or in a Government housing area	Letter of warning to suspension of privileges for up to 60 days	Suspension of privileges for up to 1 year	Suspension of privileges for up to 1 year/revocation of privileges to early return of family members or tour curtailment	
6. Child neglect	Failing to properly care for a child in violation of law, regulation, or policy	Counseling or letter of warning to suspension of privileges for up to 6 months	Suspension of privileges for up to 1 year/ revocation of privileges to early return of family members or tour curtailments		Early return of family members or tour curtailment may be appropriate for a first offense when the child's life or health is <u>endangered</u> .
7. Arson	Intentionally setting fire to a building, structure, or property of another	Letter of warning to early return of family members or tour curtailments			If arson is in Government quarters, termination of quarters may be appropriate for a <u>first offense</u> .
8. Damage to property	Intentional or willful damage to private or Government property	Suspension of privileges for up to 6 months	Suspension of privileges for up to 1 year	Suspension of privileges for up to 1 year/revocation of privileges to early return of family members or tour curtailment	Appropriate administrative action depends on such factors as value of the property, amount of damage, and age of offender.
9. Misuse of ration card, purchase, or postal privileges	Violation of UR 600-1, governing the use of ration cards, purchase privileges, and postal services	Letter of warning to suspension of privileges for up to 6 months	Suspension of privileges for up to 1 year	Suspension of privileges for up to 1 year/revocation of privileges to early return of family members or tour curtailment	More severe administrative action may be appropriate when evidence shows misuse was for profit.

**Table C-1****Table of Suggested Penalties**

<b>Offense</b>	<b>Nature of Offense</b>	<b>First Offense</b>	<b>Second Offense</b>	<b>Third Offense</b>	<b>Remarks</b>
10. Vehicle and traffic violations	Moving and parking violations within areas subject to U.S. Forces jurisdiction	Letter of warning to proposed suspension of USAREUR driving privileges under UR 190-1	Proposed suspension of USAREUR driving privileges under UR 190-1	Proposed suspension of USAREUR driving privileges to early return of family members	If appropriate suspension or revocation authority declines to take action, CMAA should consider bar from entry or early return of family members.
11. Drunk or drugged driving	Driving any vehicle while under the influence of alcohol or drugs	Proposed suspension of USAREUR driving privileges under UR 190-1, paragraph 2-16 (mandatory suspension)	Proposed revocation under UR 190-1		Second offense within 5 years requires mandatory revocation for 5 years.
12. Shoplifting		Suspension of privileges for up to 6 months	Suspension of privileges for up to 1 year	Revocation of privileges to early return of family members or tour curtailment	AAFES privileges must be suspended for at least 6 months under AR 600-8-14, paragraph 14-4; indefinite suspension for third offense is also authorized.
13. Receipt of stolen goods	Knowingly receiving, possessing, or purchasing stolen property	Letter of warning to early return of family members or tour curtailment			
14. Unauthorized use or possession of a controlled substance	Introduction of controlled substance to Government property or housing area for personal use	Suspension of privileges for up to 30 days to early return of family members or tour curtailment	Early return of family members or tour curtailment		
	Introduction of controlled substance to Government property or housing area in amounts sufficient for distribution on Government property on in a Government housing area	Early return of family members or tour curtailment			
15. Trespassing	Normally an offense involving a non-affiliated person	Bar to entry			

**NOTE:** A particular adverse administrative action is not mandatory solely because it is listed in this table. Selection of an appropriate administrative action requires balancing relevant factors in each case.

## **APPENDIX D**

### **INTERSERVICE MEMORANDUM OF AGREEMENT FOR A THEATERWIDE BAR**

#### **D-1. GENERAL**

Figure D-1 is the interservice memorandum of agreement (MOA) signed by General Montgomery C. Meigs, CG, USAREUR/7A; General Gregory S. Martin, Commander, United States Air Forces in Europe; Admiral Gregory G. Johnson, Commander in Chief, United States Naval Forces, Europe; and Lieutenant General R.P. Ayers, Commander, United States Marine Corps Forces, Europe. The provisions of the MOA, effective 26 April 2002, will remain in effect until modified or superseded.

#### **D-2. PURPOSE**

The intent of the MOA is to--

- a. Provide an interservice acknowledgement, enforcement, and issue authority of theaterwide bars from entry to installations and facilities under the operational control of the U.S. Armed Forces in Europe.
- b. Prevent personnel who are barred from installations and facilities of one branch of the U.S. Armed Forces in Europe from legally entering the installations and facilities of the other branches of the U.S. Armed Forces in Europe.
- c. Improve the security, welfare, good order, and discipline of the U.S. Armed Forces in the European theater of operations.

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**Memorandum of Agreement**

**Between**

**The Commanding General,  
United States Army, Europe, and Seventh Army (USAREUR/7A)**

**and**

**Commander,  
United States Air Forces in Europe**

**and**

**Commander in Chief,  
United States Naval Forces, Europe**

**and**

**Commander,  
United States Marine Corps Forces, Europe**

This memorandum of agreement (MOA) is made by and among the Commanding General, US Army Europe and Seventh Army (CG USAREUR), the Commander, US Air Forces in Europe (COMUSAFE), the Commander in Chief, US Naval Forces, Europe (CINCUSNAVEUR), and the Commander US Marine Corps Forces, Europe (COMMARFOREUR).

1. **Purpose.** To coordinate and agree upon the acknowledgment, enforcement, and issuance of reciprocal installation bar to entry orders. In this agreement, CG USAREUR, COMUSAFE, CINCUSNAVEUR, and COMMARFOREUR are referred to as "the parties."
2. **General.** All parties are in accord that the security and integrity of the US military forces are the paramount reasons for entering into this agreement. Barred personnel are a continuing danger to the safety, welfare, and good order and discipline of personnel stationed at our overseas installations. By entering into this agreement of mutual cooperation and recognition, the US Forces will enhance their ability to identify and prevent barred individuals who have committed serious misconduct on other installations from entering the respective party's installation, and thereby preserve the security of their personnel.
3. **Implementation.** The parties agree as follows:
  - a. To recognize, consistent with applicable Service regulations, theater-wide bar from entry orders issued by each of the parties to this agreement. This acknowledgment is to extend recognition to bar orders issued "by direction" from a designated representative of the parties. A summary of the facts of the case that resulted in the bar shall be attached to each letter or contained in the bar document itself. Bar orders issued pursuant to this MOA shall indicate their validity at all installations under the parties' control.

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**Figure D-1. Interservice Memorandum of Agreement**

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b. To assist in enforcing any bar from entry order issued by each of the other parties to this agreement.

c. To forward copies of all theater-wide bar from entry orders issued pursuant to this MOA, to the 1<sup>st</sup> PERSCOM, HQ USAREUR/7A, ATTN: AEUPE-PSSD-PSB, Unit 29058, APO AE 09081, which will act as the executive agent of the parties to maintain and distribute the consolidated list. The 1<sup>st</sup> PERSCOM will consolidate the bar list by service and distribute the updated list monthly to a central addressee designated by the parties. The parties are responsible for further distribution of the list within their commands. The parties agree to ensure this information will be available to their respective civilian personnel offices to forward for selecting official consideration should barred personnel apply for employment with the US Forces in the area affected by the bar order.

4. The parties further agree:

a. To thoroughly investigate and examine all facts and circumstances before issuing a bar from entry order to any individual or entity.

b. To provide a fair and reasonable appeal process to personnel issued bar from entry orders in which all new facts and information are completely investigated and reviewed. Complete appellate authority will rest with the party initiating the bar. Bars under this MOA that are lifted or modified will be coordinated by the party taking action with 1<sup>st</sup> PERSCOM to alert the other parties to any changed status and to allow them to consider re-initiating bar action for areas under their control.

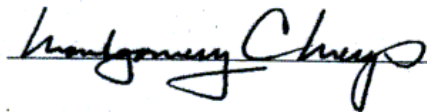
c. To keep a summarized incident report file on all barred personnel for a minimum of five years unless the individual is barred for a lesser period of time.

5. Nothing in this MOA shall be construed as infringing or limiting the authority of each installation Commander to independently assess and authorize which personnel shall be granted entry onto installations under that commander's authority.

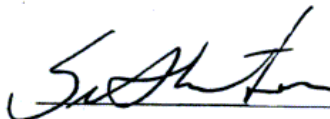
6. **Effective Date.** This MOA is effective on the date of the last party's signature on page three of this agreement, and shall remain in effect unless otherwise modified or superseded.

Signature Page, Inter-Service Memorandum of Agreement, Installation Bars

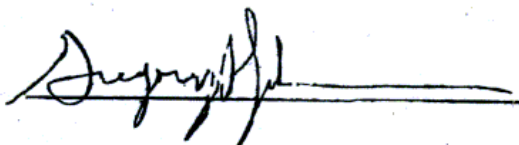
FOR USAREUR:

 Date: 17 Jan '02

FOR USAFE:

 Date: 29 Mar '02

FOR USNAVEUR:

 Date: 4/26/02

FOR USMARFOREUR:

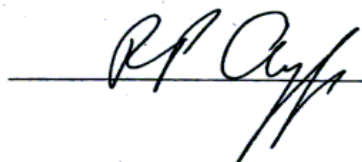
 Date: 9 MAR '02

Figure D-1. Interservice Memorandum of Agreement (Cont)

## GLOSSARY

### Section I

#### Abbreviations

1st PERSCOM	1st Personnel Command
AAFES	Army and Air Force Exchange Service
ACMAA	assistant civilian misconduct action authority
ACS	Army Community Service
APF	appropriated fund
AR	Army regulation
ASG	area support group
BSB	base support battalion
CG, USAREUR/7A	Commanding General, United States Army, Europe, and Seventh Army
CINCUSNAVEUR	Commander in Chief, United States Naval Forces, Europe
CMAA	civilian misconduct action authority
COMMARFOREUR	Commander, United States Marine Corps Forces, Europe
COMUSAFE	Commander, United States Air Forces in Europe
CPAC	civilian personnel advisory center
DA	Department of the Army
DOD	Department of Defense
DODDS	Department of Defense Dependents Schools
GCMCA	general court-martial convening authority
HQ USAREUR/7A	Headquarters United States Army, Europe, and Seventh Army
IG	inspector general
IO	investigating officer
JA	judge advocate
LA	legal advisor
LLA	legal liaison authority
MOA	memorandum of agreement
MWR	morale, welfare, and recreation
NAF	nonappropriated fund
NATO	North Atlantic Treaty Organization
POC	point of contact
PM	provost marshal
SJA	staff judge advocate
UR	USAREUR regulation
U.S.	United States
USAFE	United States Air Forces in Europe
USAREUR	United States Army, Europe
USMARFOREUR	United States Marine Corps Forces, Europe
USNAVEUR	United States Naval Forces, Europe

### Section II

#### Terms

##### **appellate**

Of, relating to, or recognizing appeals.

##### **civilian misconduct action authority**

The officer (usually the base support battalion commander) responsible for determining and taking action in response to civilian misconduct (this reg, para 4).

##### **due process**

A course of formal proceedings carried out regularly and according to established rules and principals.

**family member**

The lawful spouse, legitimate children, legitimized children, adopted children, stepchildren, and unmarried students up to 23 years old who are attending an accredited institution of higher learning full-time and whose sponsors are military members or DOD civilian employees.

**legal advisor**

Normally the servicing judge advocate in host nations other than Germany. The legal advisor provides services similar to those of the legal liaison authority at the request of the U. S. country representative for the host nation (UR 550-50).

**legal liaison authority**

The point of contact (normally the servicing judge advocate) for the U.S. Forces response in cases involving foreign criminal jurisdiction. The legal liaison authority is the sole point of contact with host-nation judicial and prison counterparts.

**logistic support**

Support that includes, but is not limited to, Government-provided or -supported housing, Government employment, use of commissaries, and use of Army and Air Force Exchange Service facilities.

**member of household**

A close-blood or marriage-connected relative who resides in the household of a military or civilian sponsor and who either is financially dependent on or, for reasons of poor health or advanced age, is supported by the sponsor. Sponsors for members of household must be active-duty soldiers or DOD civilian personnel performing duty at USAREUR installations.

**misconduct**

Conduct or behavior by persons subject to this regulation that violates or is inconsistent with the standards of host-nation laws; the United States Code; or the rules, regulations, and other directives of military authorities. Also included is disorderly conduct; conduct prejudicial to good order, discipline, or accomplishment of the mission; truancy; and conduct contrary to directions of persons exercising police authority of a commander.

**offender**

A person who is found to have engaged in misconduct as defined in this regulation.

**primary jurisdiction**

Jurisdiction of the commander of the area in which the civilian is housed. In the absence of housing support to a civilian, the base support battalion (BSB) commander of the area in which the civilian is employed will have primary jurisdiction. In the absence of either of the above two forms of support, primary jurisdiction will be determined by the BSB commander of the area in which the misconduct occurred. In area support groups that do not have BSBs, the area support group commander has primary jurisdiction.

**sponsor**

A soldier, member of the civilian component, or other person authorized individual logistic support according to the terms of his or her employment (for example, contractor personnel) whose family members are eligible to receive individual logistic support at a USAREUR installation.

**service**

A branch of the U.S. Armed Forces (for example, U.S. Army, U.S. Navy, U.S. Air Force, U.S. Marine Corps).